THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Second Appeal No. 185 of 2001.
(Old S.A. No. 319 of 1998)

Sri Atiq Ahmad son of Sri Abdul Hameed, Resident of Mohallah Khatari (Uttari) Tehsil Ram Nagar, District Nainital.

….Plaintiff-**appellant**

Vs.

Mahboob Rangsaj son of Sri Saddique, Resident of Mohallah Khatari Tehsil Ram Nagar, District Nainital.

…Defendant-**Respondent.**

Sri R.S. Sammal, learned counsel for the appellant.
Sri Jagdish Prasad, Learned Counsel for the respondent.

Date November 17,2006

P.C.: Hon'ble B.S. Verma, J.

This second appeal is directed against the judgment and decree dated 15-11-1997 passed by the then Additional Civil Judge (Senior Division), Nainital, in Civil Appeal No. 1 of 1995 arising out of judgment and decree passed by the Munsif, Kashipur, in Original Suit No. 195 of 1988. By the impugned judgment and decree, the appeal preferred by the plaintiff-appellant was dismissed.

Relevant facts giving rise to this appeal are that the appellant instituted Original Suit No. 195 of 1988 for permanent injunction against the defendant-respondent with the allegation that the plaintiff is the owner of plot no. 90 and 91 of Mohalla Khatari. On 20-9-1988, the defendant tried to take forcible possession of plot no. 90. During the pendency of the suit, the plaintiff by way of amendment sought mandatory injunction on the ground that the defendant had raised construction of wall on the disputed plot.

The defendant contested the suit by filing his written statement asserting that he along with his brother Nisar Ali is the owner of the plot in dispute as well as plot no.89 and the plaintiff has his residential house over plot no. 91, but he had illegally extended his possession towards north by one ft. the defendant has one ***pucca*** room over plot no. 90 and the wall of the plaintiff

towards south separates plot nos. 91 and 90. The defendant is in possession of plot nos. 89 and 90 since the year 1974.

On the pleadings of the parties, the learned trial court framed three issues in the suit:-

1. Whether the plaintiff is owner in possession of disputed plot no. 90?

2. Whether the defendant has raised illegal construction over disputed plot no. 90?

3. To what relief if any is the plaintiff entitled?

The plaintiff and defendant led documentary as well as oral evidence in the suit, the trail court heard both the parties and after perusing the evidence, came to the conclusion that neither the plaintiff nor the defendant are owner of the disputed plot no. 90. The trail court further held that the defendant has been in possession over part of the plot on which there is a room. Issue no. 1 was decided against the plaintiff. On Issue no.2, it was held that the plaintiff could not prove that the defendant has raised illegal construction during the pendency of the suit. Ultimately, the suit of the plaintiff was dismissed by judgment and decree dated 6-1-1995. Aggrieved by the said judgment and decree, the plaintiff-appellant went up in appeal, which was registered as Civil Appeal No. 1 of 1995, the appellate court after hearing both the parties came to the conclusion that the plaintiff could not prove his right in respect of the disputed plot and the appeal was dismissed, which gave rise to the second appeal.

I have heard learned counsel for the parties and perused the record.

From a bare perusal of the impugned judgment and decree passed by the two courts below, it is established that both the court below have recorded independent findings of fact that the

plaintiff has utterly failed to prove his right, title and possession over the disputed plot. It thus stands concluded on the basis of the finding of fact recorded by the trial court as also the first appellate court that the plaintiff has no right to bring a suit against the defendant. In such circumstances no substantial question of law is involved for determination in the present appeal.

This appeal lacks merit and is liable to be dismissed at the admission stage.

The appeal is dismissed in limine with no order as to costs.

(B.S. Verma, J.)

RCP